

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014060890

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On June 17, 2014, Parent on behalf of Student (Student) filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Rialto Unified School District (District).

On June 25, 2014, District filed a Notice of Insufficiency (NOI) as to Student's complaint.

On June 27, 2014, Student filed an Amended Request for Mediation and Due Process Hearing.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>2</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.<sup>3</sup> These

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.<sup>4</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).)<sup>8</sup> The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).) OAH treats the filing of an amended complaint as a motion to file the amended complaint.

## DISCUSSION

District’s timely NOI argues that the complaint does not provide sufficient details regarding the nature of the problems alleged. District’s NOI necessitates an order of determination within 5 days of filing. District is entitled to file written opposition, if any, to

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<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

<sup>7</sup> Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

<sup>8</sup> All statutory citations are to Title 20 United States Code unless otherwise indicated.

Student's motion to amend the complaint within three business days of service of the motion to amend. Therefore, the NOI must be resolved before District's opposition to Student's motion to amend, if any, could be considered.

Here, Student's motion to amend the complaint was filed after the NOI, within ten days of Student's complaint, and more than five days before the due process hearing. If District's NOI was granted, OAH would permit Student to file an amended complaint. Therefore, District's NOI as to Student's initial complaint has been rendered moot by the timely filing of a motion to amend the complaint. If the motion to amend is granted, District may file an NOI as to the amended complaint.

It is so ordered

DATE: June 27, 2014

/s/

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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings